

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

DATED: 18/10/2004

CORAM

THE HONOURABLE MR. JUSTICE A.K.RAJAN

WRIT PETITION No.16267 of 1997

A.Shanmugham ... Petitioner

-Vs-

1. Government of Tamil Nadu,
rep. By its Home Secretary
to Government,
Fort St. George, Madras-9.

2. The District Collector,
Periyar District,
Office of the District
Collector, Erode. ... Respondents

Petition under Article 226 of The Constitution of India to issue a
Writ of Mandamus as stated therein.

For petitioner : Mr. S.R.Sundaram

For respondents: Mr.R.Lakshmi Narayan, Government
Advocate.

:O R D E R

This Writ Petition has been filed for writ of Mandamus directing the
respondents to release more than 450 "Bonded Labourers", being the Weavers,
under the Captive Confinement and detention of Handloom Factory Owners in and
around Kaikolapalayam, Vijayamangalam, Perunthurai, Erode within the Periyar
District.

2. This petition has been filed by one person by name A.Shanmugam.
From the affidavit filed in support of his petition, it is seen that he is one
of such Weavers. There are around 500 families by the hereditary profession;
they have no sources of income excepting the daily wages earned by doing
weaving work. The family consisting of parents, children and others are
engaged as daily waged coolies. They are living below the poverty line. Even
the children are not having proper food, cloth and education and they are sent
to assist the weavers. The community of weavers are all depending upon their
employment, which are provided by the local Handloom owners. The Handloom
owners have joined together in and around the Village stated above and they

are dictating the daily wages to the Weavers. The weavers including of men, women and children - both male and female, numbering around 450 are employed on daily wages under the following 17 owners:-

1. Muthusamy : Power Loom Factory, Anna Nagar, Kaikolapalayam Post, Periyar District.
2. K.S.Nallasamy : Rajalakshmi Tex, Kaikolapalayam Post, Perunthurai Taluk, Periyar District.
3. K.P.Poopathy : Kalaimagal Tex and Anitha Tex, Kaikolapalayam, Perunthurai Taluk, Periyar District.
4. K.S.Arumugham : Powerloom Factory, Kaikolapalayam, Perunthurai Taluk, Periyar District.
5. K.S.Nataraj : Kalpana Tex, Kaikolapalayam, Perunthurai Taluk, Periyar District.
6. R.Palanisamy : Muthusamy Powerloom Factory, Kaikolapalayam, Perunthurai Taluk, Erode.
7. P.Mani alias : Kaikolapalayam, Perunthurai Taluk, Spare-parts Mani : Periyar District.
8. K.S.Palanisamy : Powerloom Factory, Kaikolapalayam, Perunthurai Taluk, Periyar District.
9. K.S.Duraisamy : Powerloom Factory, Kaikolapalayam, Perunthurai Taluk, Periyar District.
10. K.T.Paramasivam : Powerloom factory, Kaikolapalayam, Perunthurai Taluk, Periyar District.
11. K.Paramasivam : Powerloom Factory, Kaikolapalayam, Perunthurai Taluk, Periyar District.
12. K.T.Arumugham : Powerloom Factory, Kaikolapalayam, Perunthurai Taluk, Periyar District.
13. Murugan : Powerloom Factory, Kaikolapalayam, Perunthurai Taluk, Periyar District.
14. K.G.Ravi : Powerloom Factory, Kaikolapalayam, Perunthurai Taluk, Periyar District.
15. Mahendran : Powerloom Factory, Pavadikattu Thottam, Kaikolapalayam, Perunthurai Taluk, Periyar District.
16. Allimuthu : Powerloom Factory, Kaikolapalayam,

Perunthurai Taluk, Periyar District.

17. Selvam : Saravan Tex, Teachers Colony,
Surampatti, Erode, Periyar District.

3. The said Handloom owners and other owners are having 20 to 50 people for their employment on daily work basis. The said Owners are holding their weaver workers as Bonded Labourers. The weavers are treated inhumanly and tortured and over-burdened and treated in worst condition during their employment. They are not permitted to even go out of their factory campus and they are made to work 18 to 22 hours per day without rest. Even when they are sick, they are compelled to work, failing which with the help of the rowdies, they go to the respective houses and bring them in lorries and severely scold and threaten them that their children will be beaten. If the male Bonded Labourers come for the rescue of the female Bonded Labourers, the factory owners used to beat the male labourers. In some cases, the factory owners have also given money as advance to the male, female and children, who are compelled to work as Bonded Labourers. The Bonded Labourers are paid daily wages and they are very low in respect of production, turn-over and hours of employment. The male Bonded Labourers is paid Rs.1.60 per one metre, female Bonded Labourers is paid 70 paise per one thiri and minors are paid Rs.25/- per week. They are made to work from morning 8.00 a.m. to night 1.00 p.m. They filed petition to the Collector complaining about this and also sent representation to the Chief Minister. Since no action was taken, the petitioner has filed the present writ petition.

4. Earlier, learned Judge of this Court directed that Report to be filed by the Collector, Erode. As per the order of this Court, the Revenue Divisional Officer has completed the enquiry and submitted the final report. A perusal of the report reveals that total number of workers mentioned in the petition are 424; out of 424 workers, 208 workers are not Bonded Labourers and 216 persons have left the villages and their whereabouts are not known; among 208 workers, 44 workers have received advance or loan from the owners and wanted to go out without repaying the advance or loan amount.

5. Further, the report says that the investigation reveals that the system of Bonded Labour is not imposed on them while the following factors are considered. As per Sec.2(g) of Bonded Labour Abolition Act 1976, The Bonded Labour System has been defined as follows:-

(g) Bonded Labour System means, the system of forced or partly forced labour under which a debtor enters or has or is presumed to have entered into an agreement with the creditor to the effect that

(i) In consideration of an advance obtained by him or by any of his lineal ascendants or descendants whether or not such advance is evidenced by any document and in consideration of the interest, if any, due on such advance.

(ii) In pursuance or any customary or social obligation or

(iii) In pursuance of obligation devolving on him by succession or

- (iv) for any economic consideration received by him or by any or his lineal ascendants or descendants or
- (v) by reason of his birth in any particular caste or community he would

1. Render by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages or

2. forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period.

3. forfeit the right to move freely throughout territory of India.

4. forfeit the right to appropriate or sell at market value of any of his property or product of his labour are the labour of a member of his family or any person dependent on him an includes the system of forced or partly forced labour person dependent on him an includes the system of forced or partly forced labour under which surety for a debtor enters, or has or is presumed to have entered into an agreement with the creditor to the effect that the event of the failure of the debtor to pay the debt, they would render the bonded labour on behalf of the debtor.

6. Considering this detailed report of the Revenue Divisional Officer, the system under which these persons were working, does not constitute Bonded Labourers. On the other hand, the enquiry by the Revenue Divisional Officer reveals that the labourers are residing in their own rented houses and that they are going to the power loom units for work during the shift time and after the shift is over, they go back to their residence; they are getting their wages on the rates depending upon their out-turn of work that they are doing; they are doing work relating to powerloom and not in the handloom factories. They are free and having full right to sell their property at the market value and there is no interference from the employers while disposing of the property. Therefore, it is not correct to call them as Bonded Labourers. The details of the wages paid on the workers have been given and some of the persons obtained advances and they did not repay the same.

7. From the report filed by the Revenue Divisional Officer, it is clear that there is no such Bonded Labourer in these Factories. The employees (Weavers) obtain advances (Advance Wages) that they adjust subsequently. This is the practice or custom in the Handloom Weaving Industry, which is prevalent for many decades. This system cannot by any stretch of imagination be considered or termed as " Bonded Labourer ". Considering the fact that the petitioner is also one such weaver, it appears that in order to avoid the repayment of the advance wages received by him, this method of calling such persons as Bonded Labourers has been invented by this petitioner. It is nothing but a contractual obligation. The intention of th e petitioner appears to get unjust enrichment. This petition has no merits and has to be dismissed with exemplary costs, since the petitioner has filed a frivolous

petition suppressing the material facts, that resulted in the R.D.O. to conduct the unnecessary enquiry.

8. For the reasons stated above, this petition is dismissed with cost of Rs.5,000/- (Rupees Five thousand only). Consequently, connected W.M.P.No.25818 of 1997 is also dismissed. The petitioner is directed to pay the cost of Rs.5,000/- to the State Legal Aid Authority within a period of two weeks from today. The District Collector is requested to collect the costs from the petitioner and remit to Legal Aid Authority in case of failure.

Index:Yes

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To

1. Home Secretary to Government,
Government of Tamil Nadu,
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2. The District Collector,
Periyar District,
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